

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

In re Application of

U S WEST, Inc. and QWEST
COMMUNICATIONS INTERNATIONAL,
INC.

Docket No. UT-991358

For an Order Disclaiming Jurisdiction or, in
the Alternative, Approving the U S WEST,
INC. - QWEST COMMUNICATIONS
INTERNATIONAL, INC. Merger

RESPONSE OF JOINT APPLICANTS
REGARDING CONFIDENTIALITY OF
SETTLEMENT AGREEMENTS;
SUPPORTING AT&T'S OBJECTION

In response to the Commission's May 11, 2000 Notice of Additional Process, Joint Applicants¹ hereby submit this response regarding the confidentiality of various settlement agreements with some of the intervening parties in this case. Additionally, this filing supports AT&T's objection to the inclusion of its agreement in the record in this case. In response, Joint Applicants state as follows:

INTRODUCTION

The Commission should affirm the confidential designation given to the various settlement agreements by the parties to those agreements. Specifically, the agreements with AT&T, McLeod, and MetroNet are confidential between the parties and should retain that designation.

CONFIDENTIALITY OF SETTLEMENT AGREEMENTS

¹ Qwest Communications Corporation ("Qwest Corp."), LCI International Telecom Corp. ("LCI"), USLD Communications, Inc. ("USLD"), and Phoenix Network, Inc. ("Phoenix" and collectively, "Qwest") and U S WEST Communications, Inc. ("U S WEST").

In accordance with the Commission's encouragement to the parties that the issues in this case be resolved through settlement rather than litigation, Joint Applicants pursued settlement negotiations with all the parties. These negotiations were successful, and have resulted in the withdrawal of most of the intervenors in this docket given that their issues with Joint Applicants have been resolved. Some of those negotiations produced settlement agreements which the parties did not consider to be confidential (e.g. the agreements with Nextlink and Rhythms). Other settlement agreements are confidential, either by their express terms, (AT&T and McLeod), or by separate agreement of the parties (MetroNet). The designation of documents as confidential is expressly contemplated by the Commission's Protective Orders in this docket, by Commission rule, and by statute and, as a matter of policy, should not be discouraged.

The Commission has entered two Protective Orders in this docket, the First Supplemental Order of October 5, 1999, and the Sixth Supplemental Order on November 30, 1999. Both Orders contemplate that parties may designate documents as confidential if disclosure might "compromise their ability to compete fairly or that otherwise might impose a business risk if disseminated" or highly confidential if disclosure of those documents posed "a significant risk of competitive harm to the disclosing party." Based on these provisions in the Protective Orders, the settlement agreements with the various parties that were produced in response to Bench Request No. 2 were designated as public, confidential, or highly confidential.

The Commission has adopted a rule allowing documents to be designated as confidential, WAC 480-09-015. Additionally, the legislature has recognized that certain documents produced to the Commission should not be publicly disclosed, and enacted RCW 80.04.095 to afford parties protection for confidential documents, including documents containing valuable commercial information. The documents at issue herein, the AT&T and the McLeod agreements², are properly

² MetroNet is filing a statement of confidentiality today, and U S WEST concurs with MetroNet that its agreement is confidential.

designated as highly confidential.

The procedure for challenging the confidentiality of a document is set forth in the Protective Order – the burden is on the party asserting confidentiality, and the Commission or the ALJ must review the documents *in camera* to rule on the confidentiality.

It is clear from the agreements themselves that such a review must result in a conclusion that the documents are properly designated as highly confidential. Both documents are business agreements that resolve issues that are important to each party, but are unrelated to this docket. The intervenors in this docket are engaged in a highly competitive business, competing with each other and others who are not parties to this proceeding. They are placed at a potential competitive disadvantage by the public disclosure of their business agreements when such disclosure is not otherwise required by law.

As a matter of policy, the parties' designation of confidentiality as to settlement agreements should be honored. Agreements of this nature are routinely treated as confidential between the parties and not disclosed. Settlement agreements in court actions are also typically treated as confidential and not publicly disclosed. The rationale for this is to encourage settlement by not forcing parties to publicly disclose the compromises they might have been willing to make to resolve the litigation. Disclosure of settlement agreements would have a chilling effect on future settlement efforts, as parties may decline to agree to terms if a consequence is public disclosure of such terms. These same policy considerations apply here as well, and for these reasons the documents should be held as confidential.

III. AT&T'S OBJECTION

Joint Applicants support the position of AT&T set forth in AT&T's Objection to Entry of Confidential Agreement dated May 5, 2000.

IV. CONCLUSION

The Commission should retain the confidential or highly confidential designations on the settlement agreements filed in response to Bench Request No. 2. In addition, AT&T's Objection to Entry of Confidential Agreement should be sustained, for the reasons set forth in AT&T's objection.

DATED: May 16, 2000.

Respectfully submitted,

Qwest

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